

PUC E-017/GR-10-239

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Application of Otter
Tail Power Company for Authority to
Increase Electric Service Rates in
Minnesota

FIRST PREHEARING ORDER

A prehearing conference was held before Administrative Law Judge Kathleen D. Sheehy on June 22, 2010, at the Public Utilities Commission, 350 Metro Square Building, 121 Seventh Place East, St. Paul, Minnesota.

Bruce Gerhardson, Associate General Counsel, Otter Tail Power Company, 215 South Cascade Street, P.O. Box 496, Fergus Falls, MN 56538-0496; and Valerie M. Means, Attorney at Law, Moss & Barnett, 90 South Seventh Street, 4800 Wells Fargo Center, Minneapolis, MN 55402, appeared for Otter Tail Power Company (Applicant, Otter Tail, or OTP).

Julia Anderson, Assistant Attorney General, 445 Minnesota Street, Suite 1400, St. Paul, MN 55101, appeared for the Minnesota Department of Commerce, Office of Energy Security (OES).

Ronald M. Giteck, Assistant Attorney General, 445 Minnesota Street, Suite 900, St. Paul, MN 55101, appeared for the Minnesota Office of the Attorney General, Residential Utilities Division (OAG/RUD).

Andrew P. Moratzka, Attorney at Law, Mackall Crounse & Moore, PLC, 1400 AT&T Tower, 901 Marquette Avenue, Minneapolis, MN 55402-2859, appeared for Enbridge Energy, Limited Partnership, and Enbridge Energy Company, Inc., (Enbridge).

Richard J. Savelkoul, Attorney at Law, Felhaber Larson Fenlon & Vogt, 445 Cedar Street, Suite 2100, St. Paul, MN 55101-2136, appeared for the Minnesota Chamber of Commerce (the Chamber).

William Taylor, Attorney at Law, Woods, Fuller, Shultz & Smith P.C., P.O. Box 5027, Sioux Falls, SD 57117-5027, appeared on behalf of Missouri River Energy Services (MRES).

Elizabeth Goodpaster, Minnesota Center for Environmental Advocacy (MCEA), 26 E. Exchange Street, Suite 206, St. Paul, MN 55101, appeared for MCEA, the Izaak Walton League of America-Midwest Office, and Fresh Energy.

Commission staff members Stuart Mitchell and Jerry Dasinger were present.

Based upon the record and the discussion among the participants at the prehearing conference, the Administrative Law Judge makes the following:

ORDER

1. The parties to this matter as named in the Commission's Notice and Order for Hearing issued on May 27, 2010, are OTP and the OES. Prior to the prehearing conference, Petitions to Intervene were filed by MRES, Enbridge, and the Chamber. OTP filed an objection to the intervention petition of MRES. At the prehearing conference, MRES and OTP agreed to negotiate a schedule for providing supplemental authority for their respective positions.¹ Upon inquiry at the prehearing conference, there were no objections to the Petitions filed by the OAG/RUD, Enbridge, and the Chamber, and those petitions were GRANTED. The OAG/RUD, Enbridge, and the Chamber are, therefore, admitted to this proceeding as parties.

2. Other persons who wish to intervene as parties in this proceeding must file a Petition to Intervene that complies with Minn. R. 1400.6200 with the Administrative Law Judge no later than August 2, 2010. Petitioners shall provide an electronic mail address on the Petition or Notice of Appearance. Copies of the Petition to Intervene must be served upon all existing parties and the Commission. A Notice of Appearance must be filed with the Petition. Objections to such a petition must be filed within seven days of the filing of the Petition. Any person who is not affiliated with a party or a participant will be removed from the service list after August 2, 2010.

3. Members of the public need not become parties to participate in this matter. Members of the public may participate in the public hearings and may offer oral or written testimony and exhibits pursuant to Minn. R. 1400.6200, subp. 5, and Minn. R. 1400.7150, subp. 1. If time permits, public participation may also be permitted by the Administrative Law Judge during the evidentiary hearing. Any person who participates in a public or evidentiary hearing may be questioned by the parties and the Administrative Law Judge. Written public comments must be received by the Administrative Law Judge no later than **October 26, 2010**.

¹ During the prehearing conference, the Administrative Law Judge granted the motion for *pro hac vice* admission of William Taylor as counsel for MRES, based on his Affidavit filed May 19, 2010. Mr. Taylor may appear in this proceeding (either as counsel for a participant or as counsel for a party, depending on whether the intervention petition is granted) without the further presence of Minnesota co-counsel.

Schedule

4. The following schedule for proceedings is adopted:

Closing Date for Intervention	August 2, 2010
Public Hearings (final locations to be selected)	Late August early September, 2010
Bemidji	
Crookston	
Morris	
Fergus Falls	
Pre-Filing of Intervenor Direct Testimony	September 15, 2010
Pre-Filing of Rebuttal Testimony	October 15, 2010
Written Public Comments due	October 26, 2010
Pre-Filing of Surrebuttal Testimony	November 8, 2010
Evidentiary Hearings ²	November 17-19, 2010
Initial Post-Hearing Briefs	December 23, 2010
Reply Briefs and Proposed Findings	January 14, 2011
ALJ Report	February 14, 2011

5. Notice of the public and evidentiary hearings shall be given by OTP as set forth in the Commission's Notice and Order for Hearing.

Settlement

6. Minn. Stat. § 216B.16, subd. 1(a), requires the Administrative Law Judge to convene a proceeding for the purpose of encouraging settlement of any or all of the issues in this proceeding. The Administrative Law Judge encourages the parties to discuss opportunities for settlement with each other prior to the public hearings.

² The Evidentiary Hearings will commence at 9:30 a.m. at the PUC.

Discovery

7. A party may serve requests for information on any other party. All requests for information shall be made in writing by electronic mail. If expressly requested by another party, the requesting party shall follow the electronic mail message with a copy of the request sent by regular U.S. mail or other delivery service to the requesting party. **Information requests shall NOT be eFiled or served on the Administrative Law Judge or Court Reporter.** To the extent that a request includes material designated as Trade Secret or Nonpublic under the Minnesota Government Data Practices Act, Minn. Stat. Chap. 13, a request shall only be between the requesting party and responding party, and the requesting party shall follow the electronic mail message with a public version of the request. Requests shall be sent to the person(s) designated to receive data requests on behalf of the party from whom the information is sought. Any request received by electronic mail or other means after 4:30 p.m. on a business day, on a weekend day, or on a Minnesota state holiday, is considered received on the next business day.

8. The party responding to the request shall provide the requested information to the requesting party within eight business days of receipt of the information request. A business day does not include a weekend day or a Minnesota state holiday. In accordance with Minn. R. 1400.6100. subp. 1, the day that the information request is received is not counted in the eight-day period. If the request is received after 4:30 p.m. on a business day, the following business day is also not counted in the calculation of the eight-day response period.

9. Public and Non-Public responses to information requests shall be submitted by electronic mail message. If expressly requested by another party, the responding party shall follow the electronic mail message with a copy of the response sent to the requesting party by regular U.S. mail or other delivery service. **Responses to information requests shall NOT be eFiled or served on the Administrative Law Judge or Court Reporter.** Any response received after 4:30 p.m. on a business day is considered to be received the following business day.

10. If the responding party is unable to send the response by electronic mail because of the volume or nature of information included in a response, the responding party shall send the response by facsimile, U.S. mail, or delivery service so that the requesting party receives the entire response including any material designated as Trade Secret or Nonpublic by the date due. Responding parties may utilize optical data storage (DVDs or CDs) to convey large volumes of data. If the response is sent by facsimile, the responding party shall follow the facsimile with a copy of the response sent by regular U.S. mail or other delivery service. There shall be a continuing obligation to update and supplement information responses, as soon as reasonably possible, with any responsive material that may subsequently be discovered or acquired by the responding party. The responsive information need not be supplied to other parties unless specifically requested by a party.

11. If the request or response contains material designated as Trade Secret or Nonpublic information, the providing party may require that the requesting party comply with the terms of the Protective Order in this matter before providing the information.

12. If the responsive information cannot be supplied within eight business days, the responding party shall notify the requesting party as soon as reasonably possible in advance of the deadline of the reasons for not being able to supply the information and attempt to work out a schedule of compliance with the requesting party. If the parties agree that responsive information cannot be supplied within eight business days, but they are unable to work out a satisfactory schedule of compliance, the requesting party may informally request, before bringing a motion to compel discovery, that the Administrative Law Judge set a target schedule for compliance.

13. For OTP, the following persons shall be served with an electronic mail copy of any information requests or responses:

Otter Tail Power Company (mnratecase@otpc.com)
Ron Spangler, Jr. (rlspangler@otpc.com)
Bruce Gerhardson (bgerhardson@otpc.com)
Michael Bradley (bradley@moss-barnett.com)

Hard copies of requests and responses should be mailed to:

Ron Spangler, Jr.
Otter Tail Power Company
215 South Cascade Street
Fergus Falls, MN 56537

14. All disputes concerning the reasonableness of discovery requests and the timing and sufficiency of responses shall be resolved by the Administrative Law Judge upon motion of a party. Such motions may be submitted informally by electronic mail. Notice of such motions will be made by electronic mail. Informal motions to address discovery requests and responses will usually be heard by telephone conference.

Prefiled Testimony

15. Prefiled testimony and exhibits may be in any reasonable format that is understandable, logically organized, and capable of being cited by page and line number, paragraph number, or similar identifier.

16. A paper copy of prefiled testimony being offered for admission into the record at the hearing shall be provided for use at the hearing. The offering party will identify the document as having been eFiled (with the unique eFile identifying number of the document). The Administrative Law Judge will assign a hearing exhibit number to the document at the time that it is offered for admission at the hearing.

17. Corrections to any prefiled testimony shall be identified and marked on the paper copy of the exhibit. Those changes will be eFiled as soon as practical after the hearing. A hearing exhibit list will be prepared that identifies each exhibit in the hearing record, with its hearing exhibit number and unique eFile identifying number. The eFiled documents constitute the official record of the proceeding, along with any supplemental record data that cannot be eFiled. Any supplemental record data will be identified by the Administrative Law Judge as included in the official record.

18. Prefiled testimony that is not offered into the record, or stricken portions of prefiled testimony that is offered, shall be considered withdrawn and no witness shall be cross-examined concerning the withdrawn testimony. Any new affirmative matter that is not offered in reply to another party's direct case will not be allowed in rebuttal testimony and exhibits. Except for good cause shown, all revisions or corrections to any prefiled testimony shall be in writing and served upon the Administrative Law Judge and the parties no later than three days prior to the commencement of the evidentiary hearing.

Witnesses

19. Subject to change by agreement of the parties or further order of the Administrative Law Judge, the order of testimony shall be: OTP, Enbridge, Chamber and other intervenors in the order of intervention, OAG/RUD, and OES. Questioning of the witnesses shall proceed in the same order, followed by Commission staff and the Administrative Law Judge.

20. In the event that a witness must be scheduled for a day-certain to offer testimony, the sponsoring party should attempt to reach agreement with the other parties and then submit a request to the Administrative Law Judge.

21. Witnesses will be allowed ten minutes in which to summarize their prefiled testimony. In order for a witness to respond to new information raised in another party's surrebuttal testimony, the party offering that witness' testimony must obtain the prior approval of the Administrative Law Judge upon a showing of good cause for not having addressed that information in prefiled testimony.

22. Parties shall examine and cross-examine witnesses through their attorneys if they are represented by counsel. Any party not represented by counsel may examine and cross-examine each witness through any one representative chosen by the party.

23. Except for good cause shown, objections by any party relative to the qualifications of a witness or the admissibility of any portion of a witness' prefiled testimony (except surrebuttal testimony) shall be considered waived unless the objecting party states its objection by motion made to the Administrative Law Judge, no later than **4:30 p.m. on Friday, November 5, 2010.**

Filing of Documents (Excluding Information Requests and Responses)

24. Original documents shall be filed using the Commission's eFiling system where feasible, in accordance with Minn. Stat. § 216.17, subd. 3, and the Commission's standards. In any instance where the eFiling system cannot be used, the original documents shall be filed by delivery or mail with the Administrative Law Judge.

25. The effective date of filing shall be the date the document is eFiled, mailed by U.S. Mail, or delivered to the Administrative Law Judge. Parties using the eFiling system should retain the unique document identifier as proof of filing through that system. Proof of service to the service list in this proceeding shall be filed with each document or within three business days thereafter.

26. Public copies of all documents that are filed shall be served by electronic mail according to the attached official service list by 4:30 p.m., and a hard copy shall also be mailed or delivered that day to the persons indicated on the official service list. The list will be revised as necessary by the Office of Administrative Hearings.

27. Copies of trade secret and other nonpublic data shall be transmitted by electronic mail, U.S. Mail or delivery service to the parties who have signed Exhibit A to the Protective Order. Such documents may be served on the next business day following the filing of the public version.

28. After the Administrative Law Judge's Report is issued, the parties shall file the original of all documents with the Executive Secretary of the Commission in accordance with the Commission's standards.

29. Where Trade Secret or Nonpublic Data is filed with the Administrative Law Judge, that filing shall be prepared and marked in accordance with the Public Utilities Commission's September 1, 1999, *Revised Procedures for Handling Trade Secret and Privileged Data*. The procedures are available from the Commission's website at: www.puc.state.mn.us/PUC/naturalgas/data-practices/index.html. Access to nonpublic data shall be governed by the Protective Order to be issued in this proceeding.

Dated: June 30, 2010

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge



MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

600 North Robert Street
Saint Paul, Minnesota 55101

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P.O. Box 64620
St. Paul, Minnesota 55164-0620

Voice: (651) 361-7900
TTY: (651) 361-7878
Fax: (651) 361-7936

June 30, 2010

To All Parties on the Service List Attached to the Certificate of Service	
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Re: *In the Matter of the Application of Otter Tail Power Company for Authority
to Increase Electric Service Rates in Minnesota*
OAH Docket No. 3-2500-21343-2; PUC E-017/GR-10-239

Dear Parties:

Enclosed herewith and served upon you by mail is the Administrative Law Judge's First
Prehearing Order in the above-entitled matter.

Sincerely,

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

Telephone: (651) 361-7848

KDS:nh

Encl.

cc: Docket Coordinator

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
ADMINISTRATIVE LAW SECTION
600 NORTH ROBERT STREET
ST. PAUL, MN 55101

CERTIFICATE OF SERVICE

Case Title: <i>In the Matter of the Application of Otter Tail Power Company for Authority to Increase Electric Service Rates in Minnesota</i>	OAH 3-2500-21343-2 PUC E-017/GR-10-239
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Nancy J. Hansen certifies that on the 30th day of June, 2010, she served a true and correct copy of the attached First Prehearing Order, by serving it according to the attached Service List:

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Electronic Service Member(s)

Last Name	First Name	Email	Company Name	Delivery Method	View Trade Secret
Anderson	Christopher	canderson@allele.com	Minnesota Power	Electronic Service	No
Anderson	Julia	Julia.Anderson@state.mn.us	Office of the Attorney General-DOC	Electronic Service	Yes
Bailey	Thomas	tbailey@briggs.com	Briggs And Morgan	Electronic Service	No
Ferguson	Sharon	sharon.ferguson@state.mn.us	Department of Commerce	Electronic Service	Yes
Franklin	Michael	mfranklin@chamber.com	Minnesota Chamber Of Commerce	Electronic Service	No
Gaugler	Sherry	sherry.gaugler@comcast.net	Jeffrey C. Paulson & Associates, Ltd.	Electronic Service	No
Gertardson	Bruce	bgertardson@qtpco.com	Offer Tail Corporation	Electronic Service	No
Gilest	Ronald M.	ron.gilest@state.mn.us	Office of the Attorney General-RUD	Electronic Service	Yes
Hear	Burt W.	burt.hear@state.mn.us	Public Utilities Commission	Electronic Service	Yes
Harrington	William	williamh@excelsiorenergy.com	Excelsior Energy, Inc.	Electronic Service	No
Henniker	Shane	shane.henniker@enbridge.com	Enbridge Energy Company, Inc.	Electronic Service	No
Krikava	Michael	mikrikava@briggs.com	Briggs And Morgan, P.A.	Electronic Service	No
Landt	John	jlandt.ed@state.mn.us	Office of the Attorney General-RUD	Electronic Service	Yes
Monick	Bryan	bmonick@qtpco.com	Offer Tail Power Company	Electronic Service	No
Sheehy	Kathleen D.	kathleen.sheehy@state.mn.us	Office of Administrative Hearings	Electronic Service	Yes
Simon	Marg	mrgsimon@mnenergy.com	Missouri River Energy Services	Electronic Service	No
Strangier, Jr.	Rob	rstrangier@qtpco.com	Offer Tail Power Company	Electronic Service	No
Stamets	William	bill.stamets@state.mn.us	Office of the Attorney General-RUD	Electronic Service	Yes
Taylor	William	william.taylor@woodsfuller.com	Woods, Fuller, Shultz & Smith P.C.	Electronic Service	No
Thompson	SaGonna	RegulatoryRecords@xcelenergy.com	Xcel Energy	Electronic Service	No

Paper Service Member(s)

Last Name	First Name	Company Name	Address	Delivery Method	View Trade Secret
Blaizer	William A.	Minnesota Chamber Of Commerce	Suite 1500, 400 Robert Street North, St. Paul, MN-55101	Paper Service	No
Bradley	Michael	Moss & Barnett	4800 Wells Fargo Ctr, 90 S 7th St, Minneapolis, MN-55402-4129	Paper Service	No
Carling	Tammy	Great River Energy	12300 Elm Creek Blvd., Maple Grove, MN-55369-4718	Paper Service	No
Chesnut	Gary	AG Processing Inc. a cooperative	12700 West Dodge Road, PO Box 2047, Omaha, NE-681032047	Paper Service	No
Clart	Christopher	Xcel Energy	5th Floor, 414 Nicollet Mall, Minneapolis, MN-554011993	Paper Service	No
Consulting	Piedmont	Piedmont Consulting, Inc.	701 4th Ave S Ste 500, Minneapolis, MN-55402	Paper Service	No
Dahler	Derick O.	Auant Energy Services	Suite 300, 200 South 5th Street, Minneapolis, MN-55402	Paper Service	No
Davis	William T.	N/A	24524 West Rivers Bend Road, Fergus Falls, MN-565378101	Paper Service	No
Drew	Jonathan M.	Utility Research	P.O. Box 230, Fergus Falls, MN-56538	Paper Service	No
Erickson	James C.	Kelly Bay Consulting	17 Quechee St, Superior, WI-54880-4421	Paper Service	No
Ganley	Edward	N/A	32 Lawton Street, St. Paul, MN-55102	Paper Service	No
Goodpastor	Elizabeth	MN Center for Environmental Advocacy	Suite 206, 26 East Exchange Street, St. Paul, MN-551011667	Paper Service	No
Henke	Annel	Minnesota Utility Investors	413 Wacouta Street, #230, St. Paul, MN-55101	Paper Service	No
Johnson	Richard	Moss & Barnett	4800 Wells Fargo Center90 South Seventh Street, Minneapolis, MN-55402	Paper Service	No
Jones	J. Vincent	Woods, Fuller, Shultz & Smith P.C.	300 S. Phillips Avenue, Suite 300, P.O. Box 5027, Sioux Falls, SD-57117-5027	Paper Service	No
Larson	Douglas	Dakota Electric Association	4300 220th St W, Farmington, MN-55024	Paper Service	No
Larson	James D.	Auant Energy Services	200 S 6th St Ste 300, Minneapolis, MN-55402	Paper Service	No
Lewis	Elizabeth A.	Woods, Fuller, Shultz & Smith P.C.	300 S. Phillips Avenue, Suite 300, P.O. Box 5027, Sioux Falls, SD-57117-5027	Paper Service	No
Maini	Kavita	KM Energy Consulting LLC	961 N Lost Woods Rd, Oconomowoc, WI-53066	Paper Service	No
Marshall	Paul	Energy CENTS Coalition	823 7th St E, St. Paul, MN-55105	Paper Service	No
Maste	Patrick	Missouri River Energy Services	3724 W. Avera Drive, PO Box 8820, Sioux Falls, SD-57109-8920	Paper Service	No
Means	Valerie	Moss-Barnett	4800 Wells Fargo Center, 90 South Seventh Street, Minneapolis, MN-55402	Paper Service	No
Miller	Tim	Missouri River Energy Services	3724 W. Avera Drive, PO Box 8820, Sioux Falls, SD-57109-8920	Paper Service	No
Moratzke	Andrew	Madkai, Crouse and Moore	1400 AT&T Tower, 901 Marquette Ave, Minneapolis, MN-55402	Paper Service	No
Myers	Jerry L.	Izaak Walton League of America	Suite 202, 1619 Dayton Ave., St. Paul, MN-55104	Paper Service	No
Nelson	Jeffrey L.	East River Electric Power Coop.	121 SE First Street, PO Box 227, Madison, SD-57042	Paper Service	No
Nessa	James	Utility Research	P.O. Box 230, Fergus Falls, MN-56538	Paper Service	No
Podratz	Martha	Minnesota Power	50 W Superior S, Duluth, MN-55802	Paper Service	No
Sanct	Steve	N/A	101 Park Circle, Ottertail City, MN-565717003	Paper Service	No
Savelkov	Richard	Felhaber, Larson, Fenlon & Vogt, P.A.	444 Cedar St Ste 2100, St. Paul, MN-55101-2136	Paper Service	No
Schedin	Larry L.	LLS Resources, LLC	12 S 6th St Ste 1137, Minneapolis, MN-55402	Paper Service	No
Schulte	Robert H.	Schulte Associates LLC	15347 Boulder Pointe Road, Eden Prairie, MN-55347	Paper Service	No
Waldene	Carl		213 E. Summit Ave., Fergus Falls, MN-56537-2226	Paper Service	No

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